IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8378 OF 2004

Yashwantrao Laxmanrao Rajwade
and Ors. .. Petitioners

Versus

The State of Maharashtra
Department of Town Planning
and Ors. .. Respondents

Mr.V.P.Sawant with A.S.Gadkari for petitioners
Mr.Shivajirao Masut for respondent Nos. 2 and 3
Mr.R.D.Rane, Addl.G.P. for respondent No.1.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 6TH DECEMBER 2004.

P.C.

. Rule. Respondents waive service. By consent, petition is taken up for hearing. Heard Advocates.

2. By this petition, the petitioners are seeking declaration that the reservation shown on Plot bearing Survey No.225 A/2 Sangli City vide

Reservation Nos.155 and 156A in the sanctioned Development Plan published in the year 1973-74 is deemed to have lapsed and the petitioners are entitled to develop the said property in accordance with law.

3. The plot bearing S.No.225 A/2 situated at Sangli City, originally formed part of the estate of Her Highness Late Dowager Ranisaheb of Sangli Saraswatibai Chintamanrao Patwardhan of Sangli. The 1st petitioner is the administrator of the said estate. The plot bearing S.No.225A/2 was occupied and cultivated by petitioner Nos. 2 and 3 as tenants. The Development plan for Sangli City was published in the year 1973-74. In the said plan two portions of S.No.225/2 have been shown as reserved. Portion admeasuring 20 Gunthas is shown reserved for Post and Telegraf Office vide Reservation No.155. Another portion admeasuring 10,008 sq.mtrs. is shown reserved as open space vide Reservation No.156A. As far as the portion of 20 gunthas reserved for Post and telegraph office is concerned, it seems no notice has been issued to the Appropriate Authority i.e. Post & Telegraph Department and therefore,

learned Counsel for the petitioner has not pressed the petition as regards Reservation No.155.

4. The other portion of the land admeasuring 10,008 sq.mtrs. is reserved as "open space" as per Reservation No.156-A. It appears that no steps for acquisition of land have been taken for nearly 30 years. Petitioner has, therefore, addressed a purchase notice under section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short MRTP Act) to the respondent Corporation calling upon them to acquire reserved portion of the land S.No.225 A/2. No steps have been taken by the respondent Corporation for acquisition of said land covered by Reservation No.156A by the respondent Corporation within a period of six months from the date of receipt of notice as required by Section 127 of the MRTP Act. On behalf of Corporation, Deputy Commissioner, Sangli Miraj Kupwad Municipal Corporation has filed counter affidavit. The Deputy Commissioner has not disputed that no steps have been taken for acquisition of the land within the statutory period of six months. Para

6 of the counter affidavit is reproduced below:-

> "6. I say that, the respondent Nos.2 and 3 have not taken any steps for acquiring the reserved portion of lands S.No.225/A/2. I further say that, the corporation has putting reservation only for public purpose on the lands and the object of reservation is to develop the city and providing facilities and amenities to the citizens. I further say that the corporation will purchase the said property as and when the finance will be available to the Corporation."

5. Section 127 of the M.R.T.P. Act reads as follows:-

> "127:- If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force

> or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Autghority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

6. On a plain reading of section it is clear that if the planning authority fails to take steps for acquisition of the land within a period

of six months, reservation is deemed to have lapsed. Learned Counsel for petitioner drew our attention to a Supreme Court decision in the case of Municipal Corporation of Greater Bombay Vs. Dr.Hakimwadi Tenant Association and Ors. reported in 1988 Mh.L.J.1 (SC) in which it was held that "where notice of purchase is given as provided in section 127 and no steps as provided under section 126(1) are taken within six months of date of service of notice, reservation would lapse." In view of the fact that the Corporation has failed to take steps within a period of six months, petitioner is entitled to the declaration as prayed for.

7. Rule is accordingly made absolute in terms of prayer clause (a) qua Reservation 156A only. Petitioner shall be free to develop the said property in accordance with the rules, regulations and bye-laws as framed by the Corporation.

8. However, it is clarified that this order would not preclude respondents from acquiring the land under the provisions of Land Acquisition

Act, 1894.

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